

The Honorable Judge Robert S. Lasnik

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JAMES MCDONALD,

Plaintiff,

v.

ONEWEST BANK, FSB, NORTHWEST
TRUSTEE SERVICES, INC., MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., INDYMAC BANK FSB, DOES 1-50,

Defendants.

No. C10-1952 RSL

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
DISBURSEMENT OF REGISTRY
FUNDS**

**[NOTE ON MOTION CALENDAR:
JUNE 1, 2012]**

I. RELIEF REQUESTED

COME NOW, Defendants OneWest Bank, FSB ("OneWest") and Mortgage Electronic Registration Systems Inc. ("MERS") and submits the following in opposition to Plaintiff's Motion for Disbursement of Registry Funds.

II. RELEVANT FACTS

On January 25, 2011, the court granted a preliminary injunction ("Injunction") against the Property. Dkt. 24. The Injunction was conditioned upon Plaintiff making the monthly payment due under the Note and Deed of Trust into the court registry each month while the Injunction was in place. *Id.*

Between January 2011 and May 2011, Plaintiff deposited a total of \$9,390.24 into the court registry. *See* Dkt. 144. Plaintiff stopped making payments after May 13, 2011. Dkt. 94.

Due to Plaintiff's failure to make the required payments, the court lifted the injunction on or about April 1, 2012. Dkt. 94.

1 Plaintiff has now moved the court for an order authorizing disbursement of the funds to
 2 Plaintiff. Dkt. 144.

3 III. AUTHORITY & ARGUMENT

4 Under Washington's Deed of Trust Act ("DTA"), the court is required to condition the
 5 granting of any temporary restraining order on the applicant paying the principal, interest, and
 6 reserve amounts otherwise due on the obligation secured by the deed of trust into the court
 7 registry. *See* RCW 61.24.130(1)(a). And, under Fed. R. Civ. P. 65(c), the giving of security is
 8 requisite to entry of any preliminary injunction or a temporary restraining order.

9 Security is considered "the price... for injunctive relief" and stems from the courts'
 10 reluctance to grant restraining orders, and to provide "indemnity for defendants if a restraint was
 11 wrongfully procured...." *Swiss Baco Skyline Logging Co. v. Haliewicz*, 14 Wn. App. 343, 541
 12 P.2d 1014 (1975); *see also Knappett v. Locke*, 92 Wn.2d 643, 600 P.2d 1257 (1979). Yet, there
 13 can be no recovery of damages caused by a preliminary injunction even if the injunction is set
 14 aside, unless final judgment after trial is in favor of the party enjoined. *Meeker v. Stuart*,
 15 D.C.D.C.1960, 188 F.Supp. 272, affirmed 289 F.2d 902, 110 U.S.App.D.C. 161.

16 Here, the Injunction was lifted due to Plaintiff's non-payment. However, because no final
 17 judgment has been entered, a release and disbursement of the funds deposited by Plaintiff into
 18 the court registry is premature at this time. Accordingly, the court must deny Plaintiff's Motion
 19 for Disbursement of Registry Funds.

20 IV. CONCLUSION

21 Based on the foregoing, Defendants respectfully request the court deny Plaintiff's Motion
 22 for Disbursement of Registry Funds.

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V. PROPOSED ORDER

A proposed order granting the requested relief accompanies this opposition.

DATED this 30th day of May, 2012.

ROUTH CRABTREE OLSEN, P.S.



Heidi E. Buck, WSBA No. 41769
Of Attorneys for Defendants OneWest Bank
and Mortgage Electronic Registration
Systems, Inc.,